

**R865. Tax Commission, Auditing.**

**R865-9I. Income Tax.**

**R865-9I-13. Pass-Through Entity Withholding Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405.**

- (1) A pass-through entity must withhold and pay over to the state a tax on:
  - (a) the business income of the pass-through entity to the extent the business income is derived from Utah sources in accordance with Section 59-10-116; and
  - (b) the nonbusiness income of the pass-through entity derived from or connected with Utah sources.
    - (i) "Nonbusiness income of the pass-through entity derived from or connected with Utah sources" does not include portfolio income if the income would not be reportable to Utah on the pass-through entity taxpayer's Utah state tax return or the Utah state tax return of any downstream pass-through entity taxpayer.
    - (ii) "Downstream pass-through entity taxpayer" means a pass-through entity taxpayer that is a pass-through entity taxpayer of any entity that is itself a pass-through entity taxpayer.
- (2) A schedule shall be included with the return listing all of the following information for each nonresident pass-through entity taxpayer:
  - (a) name;
  - (b) address;
  - (c) social security number;
  - (d) percentage of ownership in pass-through entity;
  - (e) Utah income attributable to that pass-through entity taxpayer; and
  - (f) amount of Utah tax withheld on behalf of that pass-through entity taxpayer.
- (3) The income of a pass-through entity that is an S corporation shall be calculated by:
  - (a) adding back to the line on the federal Schedule K labeled "Income/loss reconciliation" the amount included on that schedule for:
    - (i) charitable contributions;
    - (ii) total foreign taxes paid or accrued; and
    - (iii) recapture of a benefit derived from a deduction under Section 179, Internal Revenue Code; or
  - (b) if the pass-through entity that is an S corporation was not required to complete the line labeled "Income/loss reconciliation" on the federal Schedule K, a pro forma calculation of the amounts for charitable contributions and foreign taxes paid or accrued, and of the amount that would have been entered on the "Income/loss reconciliation" line shall be used for purposes of this rule.
- (4) A pass-through entity shall calculate the tax it is required to withhold on behalf of pass-through entity taxpayers by:
  - (a) multiplying the income of the pass-through entity computed in Subsection (1) by the tax rate in effect under Section 59-10-104; and
  - (b) subtracting from the amount calculated in Subsection (4)(a) any amounts withheld from the pass-through entity under Section 59-6-102 that are attributable to pass-through entity taxpayers for whom the pass-through entity is required to withhold.
- (5)(a) A pass-through entity is not required to withhold a tax on behalf of a pass-through entity taxpayer of that pass-through entity if the pass-through entity taxpayer is:
  - (i) exempt from taxation under Section 59-7-102 and the income from the pass-through entity is not unrelated business income to the pass-through entity taxpayer;

(ii) ~~[an individual retirement account as defined under Section 408(a), Internal Revenue Code and the income from the pass-through entity is not unrelated business income to the pass-through entity taxpayer;]~~

~~[(iii)]~~ a real estate investment trust if all of the earnings of the real estate investment trust are distributed to the owners of the real estate investment trust; or

~~[(iv)]~~(iii) a person exempt from state income tax under Section 59-10-104.1.

(6)~~[(a) Subject to Subsection (6)(b), and for]~~For purposes of ~~[Subsection]~~Subsections 59-10-1403.2(5) and (6), a pass-through entity shall apply to the commission for a waiver of penalty or interest, on an amount the pass-through entity fails to pay or withhold and for which the pass-through entity taxpayer files and pays in a timely manner, by checking the box on the tax return requesting the waiver for required withholding.

~~[(b) The provisions of Subsection (6)(a) shall be effective for taxable years beginning on or after January 1, 2010.]~~

(7) An entity that is disregarded for federal tax purposes is disregarded for purposes of pass-through entity withholding.

(8) The pass-through entity's federal identification number shall be used on the form TC-65 in place of a social security number.

(9) Examples.

(a) Partnership A has two partners, both of whom are nonresident individuals exempt from state income tax under Section 59-10-104.1. Partnership A is not required to withhold Utah tax for these partners.

(b) For tax year 2010, Partnership C has two partners, Partnerships D and E. Partnership D has two partners, both Utah resident individuals. Partnership E has three nonresident partners, all of whom are subject to Utah state tax. Partnership C's responsibility for withholding is based on Partnerships D and E, not the partners of Partnerships D and E. Accordingly, Partnership C must withhold tax on behalf of Partnerships D and E. If, however, both Partnership D and the partners of Partnership D file returns and pay any tax due by the filing due date for Partnership C, including extensions, Partnership C may elect to not withhold those amounts and may apply to the Tax Commission, by checking the box on the tax return requesting the waiver for required withholding, for a waiver of tax, penalty, and interest on amounts Partnership C should have collected and remitted for Partnership D, but did not.

**KEY: historic preservation, income tax, tax returns, enterprise zones**

**Date of Enactment or Last Substantive Amendment: September 23, 2010**

**Notice of Continuation: March 20, 2007**

**Authorizing, and Implemented or Interpreted Law: 59-10-116; 59-10-117; 59-10-118; 59-10-1403.2; 59-10-1405**